IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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C.M. No. 10771-C of 2015 &
RSA No. 4484 of 2015

Date of decision: April 11, 2016

M/s Girnar Impex Ltd., Ludhiana

.....APPELLANT

Versus

Municipal Corporation, Ludhiana and others

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Viren Jain, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J.

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Ludhiana dated 17.09.2014 whereby suit for permanent injunction preferred by the appellant-plaintiff restraining the respondents-defendants from realising the amount of house tax claimed through their notice dated 04.12.2007 without following the principles of natural justice and thus, unsustainable, has been dismissed, appeal against which preferred also stands dismissed by the Additional District Judge, Ludhiana on 29.05.2015. Both the Courts below have held that the suit, as preferred by the appellant, is not maintainable as per Section 139 of the Punjab Municipal Corporation Act, 1976 as the jurisdiction of the Civil Court is barred and further that the suit, as filed, is not through an authorized person.

2. It is the contention of the learned counsel for the appellant that the findings, as recorded by the Courts below, are not sustainable and the remedy of civil suit is available to the appellant as the impugned notice dated 04.12.2007 is in violation of the principles of natural justice. He contends that the statutory remedy of appeal, no doubt, is available to the appellant but that would not bar the jurisdiction of the Civil Court where the notice has been issued without jurisdiction by the respondents especially when the rules of natural justice have not been complied with. He places reliance upon the various judgments including **Munshi Ram and others** vs. **Municipal Committee, Chheharta**, (1979) 3 Supreme Court Cases 83, **Shiv Kumar Chadha** vs. **Municipal Corporation of Delhi and others,** (1993) 3 Supreme Court Cases 161 and **Municipal Corporation Faridabad** vs. **M/s Janta Steel and Metal Co-operative Industrial Society Limited, Faridabad**, 2009 (3) RCR (Civil) 692.

3. Counsel for the appellant further contends that the finding of the Courts below that the suit is not maintainable as the same has been filed by a person who is not authorized by the appellant, cannot sustain as the resolution is on the record. He, thus, contends that the impugned judgments and decree deserves to be set aside and the suit of the plaintiff be decreed.

4. I have considered the submissions made by the learned counsel for the appellant and with his able assistance, have gone through the impugned judgments.

5. The factum that the house tax amount is due towards the appellant-plaintiff is not in dispute. It is also not in dispute that the assessment of the house tax and the notice in this regard was issued but the same has not been challenged by the appellant. Without there being any challenge or the jurisdiction of the competent authority to the imposition of the house tax, the remedy of Civil Suit would not be available in the light of Section 139 of the Punjab Municipal Corporation Act as according to the said Section, no objections shall be taken to any evaluation or assessment nor shall the liability of any person to be assessed or to be taxed be questioned in any other manner or by any authority than provided in the Act itself. Admittedly, the remedy of appeal is available before the Divisional Commissioner against the impugned notice, which is a statutory specified mode of redressal of grievance, which, admittedly, the appellant has not availed of, instead the quantum, as assessed by the respondents, has been challenged, which, in the light of the above provisions of the Statute, is not permissible except by way of filing an appeal. This Court in **Municipal Committee, Abohar** vs. **Dal Chand**, 2008 (1) RCR (Civil) 639 has held that the Civil Court has no jurisdiction to entertain and try a suit challenging house tax as it is open to the assessee to raise all the pleas before the appellate authority under the Municipal Act. The conclusion, thus, drawn by the Courts below that the Civil Court has no jurisdiction to entertain the suit cannot be faulted with.

6. The judgments, as referred to by the counsel for the appellant i.e. **Munshi Ram and others** (supra), **Shiv Kumar**

Chadha (supra) and **Municipal Corporation Faridabad** (supra) would not be applicable to the case in hand as those were the cases where the jurisdiction itself of the authority or the Municipal Committee was challenged to impose the tax, which is not the case in hand where the authority to impose the house tax is not challenged but the mode and quantum of assessment thereof is under challenge. The judgments, therefore, relied upon by the counsel for the appellant would not be of any help to the appellant.

6. As regards the second ground taken for not entertaining the suit and rejecting the same as the same has not been filed by a competent person, suffice it to say that the appellant has not proved any document which could show that Sh. Adishwar Jain was the Director of the appellant-Firm. It has been admitted in his cross-examination that he has not brought any document to show that he is the Director of the appellant-Company or that he has been authorized by the Company to file the present suit. In the absence of any proof of authorization to file the suit or that he was the Director of the appellant-Company, the findings, as recorded by the Courts below, cannot be faulted with as the same are based on proper appreciation of the pleadings and evidence brought on record.

7. No other point has been raised or argued by the counsel for the appellant.

8. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, there is no illegality in the impugned judgments

passed by the Courts below.

9. There is no substantial question of law in the present appeal, which requires consideration of this Court.

10. In view of the above, finding no merit in the present appeal, the same stands dismissed.

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In view of the dismissal of the main appeal, no separate orders are required to be passed in this application for stay and, therefore, the same stands dismissed.

(AUGUSTINE GEORGE MAISH)
JUDGE

April 11, 2016
pj